

**DURHAM, NORTH CAROLINA
MONDAY, MAY 20, 2013
7:00 p.m.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Council Member Howard Clement, III.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Senior Executive Assistant Tonette Amos.

Mayor Bell called the meeting to order with a moment of silent meditation followed by the pledge of allegiance led by Council Member Brown.

Mayor Bell read a proclamation designating May 19-24, 2013 as National Public Works Week that was presented to Public Works Director Marvin Williams who thanked staff and Council for their support and announced activities planned for this event.

Mayor Pro Tempore Cole-McFadden presented the Cora Cole-McFadden Diversity Change Agent Award to Ruby Hargrove-Monds, Human Resources Manager and John Conyers, Custodian - General Services Department. Each recipient thanked the Council, staff and the individual who made the nomination.

Mayor Bell asked for priority items by the City Manager, City Attorney and City Clerk. There were no priority items.

Mayor Bell explained that the Consent Agenda is approved with a single motion and items pulled from that agenda by any citizen or council member will be discussed later in the meeting. No items were pulled from the Consent Agenda.

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to approve the Consent Agenda was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

[CONSENT AGENDA]

Subject: Overtime Performance Audit March 2013

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to receive and accept the Overtime Performance Audit dated March 2013 as presented and approved at the April 22, 2013 Audit Services Oversight Committee Meeting was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and

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Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Subject: Stormwater Utility Fee Performance Audit April 2013

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to receive and accept the Stormwater Utility Fee Performance Audit dated April 2013 as presented and approved at the April 22, 2013 Audit Services Oversight Committee meeting was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Subject: Request to Amend Grant Project Ordinance #14398 High Intensity Drug Trafficking Areas (HIDTA)

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to accept the Executive Office of the President, Office of National Drug Control Policy, 2011 High Intensity Drug Trafficking Areas (HIDTA) Grant by executing the grant documents; and

To adopt the Executive Office of the President, Office of National Drug Control Policy, 2011 High Intensity Drug Trafficking Areas (HIDTA) Grant Project Ordinance, superseding Grant Project Ordinance #14398 in the amount of \$298,501.82 was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Ordinance #14448

Subject: Contract ST-265: 2013 Street Repairs and Repaving - FSC II, LLC, DBA Fred Smith Company

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract for ST-265: 2013 Street Repairs and Repaving project with the FSC II, LLC, DBA Fred Smith Company in the amount of \$1,276,328.25;

To establish a contingency fund in the amount of \$127,632.83 (10%); and

To authorize the City Manager to execute change orders to the contract such that the total project cost does not exceed \$1,403,961.08 was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

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Subject: Contract MR-10 - Residential Meter Replacement Project Phase IV – Vanguard Utility Service, Inc.

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with Vanguard Utility Service, Inc. for Contract MR-10 Residential Meter Replacement Project Phase IV in the amount of \$3,333,405.00;

To establish a contingency fund for the contract in the amount of \$332,595.00 and

To authorize the City Manager to negotiate change orders for the contract provided that the cost of all change orders does not exceed \$332,595.00 and the total project cost does not exceed \$3,666,000.00 was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Subject: Department of Water Management Mist Lake Facility Master Plan - Heery International, PC

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with Heery International, PC for Professional Engineering Services in an amount not to exceed \$356,823.52 for the Department of Water Management Mist Lake Facility Master Plan;

To establish a contingency fund for the contract in the amount not to exceed \$35,700.00; and

To authorize the City Manager to negotiate change orders for the contract provided that the cost of all change orders does not exceed \$35,700.00, and the total project cost of \$392,523.52 was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

[GENERAL BUSINESS AGENDA]

Subject: Proposed Fiscal Year 2013-14 Budget and Fiscal Year 2014-2019 Capital Improvement Plan (CIP)

To receive a presentation from the City Manager on the proposed Fiscal Year 2013-14 Budget and Fiscal Year 2014-2019 Capital Improvement Plan.

City Manager Thomas Bonfield presented the FY 2013-14 preliminary budget – which includes no property tax increase – keeping the current tax rate at 56.75 cents per \$100 of assessed property value.

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City Manager Bonfield stressed how the City's strategic plan goals continue to help prioritize programs and service levels residents want and expect, along with a better understanding of resources necessary to provide them. Key among the City's goals is being a well-managed city, which, according to Bonfield, encompasses many factors included in the budget – tax rates, debt load, bond ratings, fund balance, utility rates, and resident and employee satisfaction.

City Manager Bonfield recommended a total preliminary budget for fiscal year 2013-14 of \$381 million, about \$7.8 million or a little more than 2 percent higher than last year's budget, including a 4 percent smaller general fund budget of \$169.6 million as compared to last year's budget for the City's core services. This decrease represents the establishment of a special revenue fund for last year's penny tax increase for housing and moving other property tax revenue into dedicated funds primarily for debt service and transit.

While 16 positions, four of which are filled, were recommended for elimination, this year's budget maintains city services and programs at comparable levels as last year. Public Safety continues to be a top priority with all sworn positions being fully funded. Also, new technology is funded for police and emergency response vehicles to maintain access to criminal information and to decrease emergency response time. The City proposes to continue sharing costs with the County for a gang reduction initiative strategy and the warrant control office. Funding for three new positions is recommended for the police department's forensics unit to improve crime analysis.

Other fees or increases include a monthly \$1.50 monthly solid waste collection fee for capital needs; a \$10 per month parking fee increase for parking lots and decks; multi-day transit fare fees increases; a \$1 special event parking increase; and water and sewer and stormwater rate increases that were already approved by Council at its May 6, 2013 meeting.

City Manager Bonfield also recommended a 2 percent increase for general pay plan employees meeting performance expectations, and a 3-to-5 percent increase for police and fire pay plans. Although health care premiums remained constant, dental premiums increased slightly.

The Capital Improvement Plan (CIP) budget contains nearly \$53 million, including \$26 million for water and sewer infrastructure, for new projects, and to complete existing projects. CIP funding is provided through impact fees, water and sewer revenues, revenue bonds, stormwater fees, and program income.

Other highlights of the FY 2013-2014 Proposed Budget include:

- \$500,000 for deferred maintenance
- \$750,000 for street repaving
- \$64,000 for street lighting
- \$141,000 for forensic accreditation

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- \$75,000 for youth opportunity initiative
- \$6 million for solid waste, stormwater and water management fleet
- \$1.6 million for arts and culture including the Carolina Theatre, Durham Arts Council, St. Joseph's Historic Foundation, American Dance Festival, Full Frame Documentary Film Festival, Durham Blues Festival, and other public art initiatives

The budget also maintains the City's fund balance reserves, or rainy day fund, at a little more than 12 percent with \$300,000 of these funds to be used for one-time expenditures. Bonfield noted that despite challenging economic conditions, the City continues to maintain excellent fiscal status with a AAA bond-rating from all three ratings agency – achieved by only 38 of the nation's more than 22,500 cities.

City Manager Bonfield said new for this year, an E-Town Hall event will be held on Monday, June 3 at 7 p.m. during the regularly scheduled City Council Meeting and residents are being asked to send their thoughts and questions now that they've heard the proposal. Comments and questions can be sent in a number of ways – by email, on the City's Facebook page or Twitter feed, and even by video submission on the City's YouTube channel, and they will respond to as many comments and answer as many questions as we can during our live E-Town Hall which will be aired on DTV8 and on the City's website.

A public hearing is also scheduled for the preliminary budget for Monday, June 3 with final budget approval set for Monday, June 17 at 7 p.m. in the City Council Chambers.

No action was taken on this item by Council.

Subject: Water Extension Agreement with Ersi Enterprises, LLC to Serve 2722 East Geer Street

Robert Joyner, of the Public Works Department, briefed Council on the water extension agreement with Ersi Enterprises LLC to serve 2722 East Geer Street because of a documented failed well.

City Manager Bonfield pointed out that additional information was provided to Council based on questions raised at the Work Session regarding why staff was not pursuing annexation at this point.

Council Member Catotti thanked the City Manager and staff for additional information and stated she understood management concerns about inefficiencies as it relates to a single lot. In the future, she requested that Council receive water extension agreements along with annexation requests so that they can see the analysis moving forward.

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MOTION by Council Member Catotti seconded by Council Member Moffitt to authorize the City Manager to enter into a water extension agreement with Ersi Enterprises, LLC to serve 2722 East Geer Street was approved at 7:49 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

Subject: Liberty Warehouses No. 1 and 2 (LD1200003) Local Historic Landmark Designation Removal

To conduct a public hearing and receive comments on the Liberty Warehouse No. 1 and 2 (LD1200003) Local Historic Landmark Designation Removal; and

To adopt an Ordinance to remove the local historic landmark designation from Liberty Warehouses No. 1 and 2.

City/County Planning Director Steve Medlin briefed Council on the application by Greenfire Development to remove the local historic landmark designation from Liberty Warehouses Nos. 1 and 2 located at 611-613 Rigsbee Avenue. He reported that the two conjoining warehouses were built in 1938 (611) and 1948 (613), designated by Council as a local historic landmark in 2010 and the structure was individually listed on the National Register of Historic Places in 2008.

He stated at the time of the designation the statement of significance cited that:

Liberty Warehouse is the only surviving loose-leaf tobacco auction house in Downtown, where once a district of such auction houses stood. When the Liberty Warehouse stopped hosting tobacco auctions in the 1980s, it represented the close of a significant era in Durham's history. As the only remaining evidence in the built environment of this piece of cultural history, the Liberty Warehouse is significant by association with events that have made a significant contribution to the broad patterns of our history and by embodying the distinctive characteristics of a type that is now rare. Despite some changes to the exterior and interior, this structure retains integrity.

He stated the Planning Department, the State Historic Preservation Office, and the Historic Preservation Commission have recommended denial of this request.

Mayor Bell opened the public hearing.

Paul Smith, Managing Partner of Greenfire Development/current owners of Liberty Warehouse, stated that they are requesting the City to remove the landmark status from the building which is currently under contract for sale to East West Partners. He stated they make this request for delisting with some disappointment and after a lot of effort to find an economically, viable use for the building. He gave a brief overview of Greenfire's work of adaptive reuse of historic buildings to include Baldwin, Kress, Rogers Alley [3 buildings] and the deal to bring 21c to the

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Hill Building. He pointed out that Liberty Warehouse is on a different scale and commented on their engagement with community stakeholders and several potential development partners to see if they could save at least half of the building for a large retail use, but they could not come close to making the numbers work. Finally, he explained why the State denied a request from Preservation Durham last July to grant the Liberty building statewide significance. He said the State denied the application due to the large number of all brick tobacco auction warehouses still standing throughout the state in much better condition than Liberty Warehouse.

Roger Perry, representing East West Partners, referenced his work [housing and mixed use] on the Woodcroft community in 1983 and stated that he was excited about the chance to develop a new community in downtown Durham. He commented on their positive meeting with Preservation Durham which led to initiatives to preserve, maintain history, and memorialize the culture and the past of what occurred at Liberty Warehouse. He said they are more than happy to continue discussions with Preservation Commission and the Historic Preservation Commission. He gave an overview of the preliminary site plan which would include three buildings [residential and commercial, parking deck], green space adjacent to Central Park – new public space for the Central Park if approved by the Central Park Commission, pedestrian pathways, and massing study. He stated they are proposing 50,000 square feet of commercial space as well as residential.

He gave a power point presentation entitled Liberty Warehouse highlighting the following:

EXISTING CONDITIONS

- Deteriorating metal clad building
- Size, layout and lack of structural integrity render it impossible to integrate and salvage during redevelopment
- Roof collapse in may 2011
- Denied state historical significance in 2012
- Identified for residential redevelopment in the 2008 downtown Durham master plan

PRESERVATION INITIATIVES

1. Integrate the existing Southern brick wall of Liberty Warehouse in to the redevelopment plans by preserving the Foundary, Central Park mural and wall, but making strategic penetrations to allow for enhanced public connectivity and programming in Central Park.
2. Incorporate the Northeastern brick façade and LIBERTY sign in to the redevelopment plans.
3. Reuse existing old wood materials from the warehouse within the redevelopment and recycle those that are not reused onsite.
4. Memorialize and properly document the Liberty Warehouse building and the tobacco auction business in Durham, either through an outdoor public exhibit or in a dedicated museum space.
5. Use architectural forms and materials that contextually relate to the surrounding area.

SITE PLAN

MASSING STUDY

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RENDERING
TAX BENEFITS

Robert Chapman, representing TND Partners, discussed his professional background and spoke in support of this project and the work that had been completed by Roger Perry.

Bill Kalkhof spoke in support of removing the historical designation from Liberty Warehouse. He commented on his work with Downtown Durham, Inc. and the discussion with developers over the past three years to save the warehouse. He stated to save Liberty Warehouse would require massive, significant sums of public capital dollars and ongoing public operational support. He referenced the Historic Commission process and said any delays that the Historic Preservation Commission could impose upon the development of this project would discourage any financial institutions and any private investment from moving forward. He stated East West Partners is a well-known and reputable developer and in their letter dated May 16, 2013 to Wendy Hillis of Preservation Durham with copies provided to Council--they outlined the historic elements that they will keep with the building, pointed out that this is an investment of over \$50 million in downtown with significant growth of tax base/tax revenues, there would be job creation and proposed project would be consistent with the goals and vision of the Downtown Master Plan and the Durham Central Park Plan. He mentioned the development of this key property would have a major catalytic effect for future investment in the Durham Central Park District, City Center District and the Durham Central Park District as well as would complement private investments that have been made by Measurement, Inc., Durham Co-Housing, YMCA, to name a few.

Josh Parker, representing Preservation Durham, thanked Council for their time regarding the future of Liberty Warehouse and stated Preservation Durham is concerned with protecting Durham's historic assets. He said delisting Liberty Warehouse is not their first choice; however, they do understand the realities our community faces when working to balance historic preservation with revitalizing downtown. Liberty Warehouse merits landmark status but has circumstances that make preservation all but impossible. He stated this is a unique situation and Preservation Durham has worked with the developer and owner on an agreement that will give the best chance for partial preservation and full documentation of this important building. Given the circumstances, he said that Preservation Durham felt that this is the best way to move forward. He stated they are supportive of the owner and developer's request to delist the property as a local historic landmark and this strategy is a reasonable compromise to prevent losing the building all together. He thanked Council for their help and support of Preservation Durham, Historic Preservation Commission and preservation issues in the community.

Wendy Hillis, representing Preservation Durham, shared that they have reached an agreement with Greenfire and East West Partners regarding the future development of the site and the letter outlining this agreement was forwarded to Council last Thursday. She stated East West Partners agreed to integrate the existing southern brick wall of Liberty Warehouse into the redevelopment plans, incorporate the northeastern brick façade and Liberty signs into the redevelopment plans, reuse existing old wood materials from the warehouse within the redevelopment and recycle those that are not reused on site, memorialize and document the Liberty Warehouse building and the tobacco auction business in Durham, use architectural forms and materials that contextually

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relate to the surrounding area. Also, they have agreed to continue dialogue with Preservation Durham around the development of the Liberty Warehouse that would include regular communication and meetings as the project proceeds towards construction. Should a scenario arise where East West Partners is not involved in the redevelopment of Liberty Warehouse, Greenfire development is committed to meeting the same criteria just outlined. She stated the delisting landmark status of Liberty Warehouse is not their first choice of action and they maintain that the building continues to meet the criteria for local landmark status. Given real constraints, they felt that direct negotiation with the owner and the developer has ultimately resulted in reaching an important objective--retention of as much of Liberty as possible. She stated they support the developer's request to delist the structure and thanked them for their deliberations.

Larry Tilley made comments in favor of delisting the property.

Heather Wagner, representing the Historic Preservation Commission, stated on February 5, 2013 the Commission reviewed the request for the removal of designation along with current photos of the structure and the original landmark designation report. In weighing the evidence, she reported that the Commission found that the property still met the criteria for landmark designation and stated that the Commission recommended denial of this request. She made comments on the report prepared by the applicant that outlined the damage to the roof and structural supports as the reasons for the request noting that sections of the roof and internal structural supports are in need of full replacements that would affect historic integrity of the building to such an extent that it would no longer meet the landmark criteria. However, the landmark designation materials submitted in 2009 made no mention of the specific significance of the roof and structural supports. She stated Liberty Warehouse Nos. 1 and 2 are the only significant remaining evidence of the cultural of tobacco auctions in Durham. She stated to remove the designation, when the building still meets the designation criteria, serves only to under mind the landmark program as a whole. She urged Council to deny this request based solely on the evidence regarding the cultural and architectural significance of the property provided in the application as you would for any landmark designation and to do so independent of potential redevelopment proposals for the site.

John Martin spoke in opposition to this item. He asked Council to slow down and let the process work.

Peter Katz stated his concerns are what will replace the Liberty Warehouse, how it would impact his area—Old North Durham and with the justification for delisting the property. He stated the focus should be assuring that the redevelopment occurs in a way that best complements its surroundings and speaks to our City's value. He stated that he would like to hear more about Mr. Perry's retail strategy and affordability of housing units before a vote is taken.

Bo O'Reilly, former tenant before roof collapsed/representing Liberty Arts, stated they would like to meet with the developer to voice their hopes for what may come in the future and would like to see the presence of artists in the new plans.

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Debi Pratt, former tenant of Liberty Warehouse, addressed the Council asking-- After you found Greenfire responsible for neglect and gave them a October 13, 2013 deadline to comply with the necessary repairs to Liberty Warehouse --did you start fining Greenfire up to \$500 daily and if no, why not.

Philip Azar stated that historic tax credits and incentives have been important to Durham for a long time and have done a lot of good. Tonight if the decision is made to delist the Liberty Warehouse...it's not really based on the merits and what the Historic Preservation Commission has studied and said and the criteria that are set out, it is because there are other urgencies and City Council has made that determination. If Council supports this item, he is hoping that it's done in a way that the work completed by the Historic Preservation can be honored and continued to go on.

Mayor Bell closed the public hearing.

Mayor Bell stated almost three years ago, the City Council approved the Liberty Warehouse as a historic landmark designation. He explained why he supported the historic designation mentioning that it met the criteria and wanted something done on the property in a positive way. He made comments on the investments by Greenfire and the change in the economy that hurt Greenfire so that things did not go as planned. He stated he is in support of delisting the property because there is another opportunity to have something on that site in a positive way for the good of this property and this community. Also, he made comments about the quality development work experience of Mr. Roger Perry.

Mayor Pro Tempore Cole-McFadden spoke in support of this item and the work of the Commission.

Council Member Brown commented on the vision that has not been fulfilled as a result of designating the Liberty Warehouse as a historic landmark designation. He spoke in support of delisting this property, thanked Paul Smith [Greenfire], Roger Perry [East West Partners], Josh Parker and Wendy Hillis for reaching a meaningful compromise and noted that there would be numerous opportunities for citizens to review the progress that will take place.

Council Member Moffitt thanked everyone who testified sharing their concerns in person or by e-mail and referenced his thoughts about the designation and the Durham Historic Preservation. He stated that he would be voting to rescind the designation and would like to see the ordinance changed in the future to assess interests and penalties when the owner seeks to have a designation removed.

Council Member Catotti thanked everyone for the outpouring of e-mails, conversations, etc. and applauded the work of Preservation Durham in coming to a compromise in working with the developer towards retaining pieces of the warehouse. Also, thanked the Historic Preservation Commission for serving, the giving of their time and effort. She stated that she did not support the historic designation when it came before Council previously; however, she is comfortable with delisting the property.

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City/County Planning Director Steve Medlin addressed the question raised regarding fines. He reported that Greenfire was issued a \$500 civil citation and, immediately following, they elected to submit both the deed listing of the property as well as a certificate of appropriateness for demolition. He stated when those applications came in-- all enforcement actions at that point are stayed until such time as those applications are subsequently handled. He stated if the property retains its historic designation the fines would start again.

Roger Perry, representing East West Partners, responded to questions raised. He stated they will have local and one-type merchants in this new facility that would include some components of office and as well as retail to include the vast majority as food, entertainment i.e. He noted public art would be a part of the site plan, addressed the rent rate/affordability issue. He stated the project would be designed to include workforce housing for people who want to live in a downtown setting [small efficiency, one/two bedroom homes] which would retain some affordability.

Council Member Schewel made comments in support of delisting Liberty Warehouse. He stated that there is a need to figure out a process that works for the community at-large as well as maintaining a strong voice in any development going forward for historic preservation and for the Historic Preservation Commission.

Mayor Bell stated this is not an indictment of the Historic Preservation Commission. He said that the current process is open and transparent and he would have an issue talking about the process.

MOTION Council Member Brown seconded by Mayor Pro Tempore Cole McFadden to receive comments on the Liberty Warehouse No. 1 and 2 (LD1200003) local historic landmark designation removal; and

To delist the property (Liberty Warehouse No. 1 & 2) was approved at 8:52 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Ordinance #14449

There being no further business to come before the City Council, the meeting was adjourned at 8:52 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk